APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 9756.

Leo George Becker,
Appellant,

versus

Philco Corporation,
Appellee.

No. 9757

James J. Taglia,
Appellant,

versus

Philco Corporation,
Appellee.

APPEALS FROM THE
UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA, AT ALEXANDRIA.
Oren R. Lewis, District Judge.

(Argued March 4, 1965. Decided February 6, 1967.)

Before HAYNSWORTH, Chief Judge, and SOBELOFF and BRYAN, Circuit Judges.

Rodolphe J. A. de Seife (Frank B. Tavenner and Robert Sheriffs Moss and Hart, Moss & Tavenner on brief) for Appellants, and Laidler B. Mackall (W. W. Koontz, Karl E. Wolf, and Steptoe & Johnson, and Boothe, Dudley, Koontz & Blankingship on brief) for Appellee.

ALBERT V. BRYAN, Circuit Judge:

This is a libel action by James Jude Taglia and Leo George Becker against their employer, Philco Corporation, for alleged defamation of them in a report made to the United States under the terms of a defense contract. On defendant's motion for summary judgment, the District Court dismissed, holding the communication absolutely privileged. We affirm.

For the production of defense materials, the United States has found it necessary to let their manufacture to private industry. In this process national security requires that the Government be assured of the maintenance of secrecy of certain information passed to and generated by the manufacturer. To this end, only such employees of the latter as are cleared by the United States are given access to this secret—classified—data. Such a contract was made with Philco on December 11, 1961. It contained the general security provisions. Among them, and the bone of this controversy, is the covenant of the contractor to keep the Government advised of every proven or even suspected compromise of this confidence.

Plaintiffs here had been approved by the Government, and their work for Philco required them to have regular access to classified papers. Indeed, their value to the company depended upon their "authorized access". A suspected breach of this obligation by them was communicated to Philco in June and July 1962. It was investigated and the result reported to the Government. In the course of the latter's inquiry, the plaintiffs' clear-

ances were temporarily suspended, awaiting the final decision of the administrative hearing guaranteed them by the regulations of the Department of Defense. As this meant the end of their usefulness to Philco, they lost in January 1963 their positions and the chance of similar employment, the principal damage claimed in this suit. The outcome of the administrative proceeding does not appear presently.

There is vagueness as well as conflict in the record as to when the suspicion was carried to Philco. For our purposes we accept the plaintiffs' averments that word was passed to the company by a disgruntled employee following discharge. It reached Philco in the early summer of 1962. The subsequent developments were summarized by the District Judge as follows:

> "[U]pon receipt thereof [of the accusation] the security officer conducted an investigation of the circumstances reported. The results of this inquiry were then turned over to Robert M. Jones, Vice President of Philco Corporation in charge of industrial relations, for action in accordance with the requirements of the Department of Defense Industrial Security Manual for safeguarding classified information and the Security Agreement with the Defense Department. Mr. Jones participated in further inquiry of the subject matter which included informing both Mr. Becker and Mr. Taglia of the nature of the report and affording them a full opportunity to be heard, and permitting them to make statements concerning the matter under investigation. A report of the matter was then made to the Defense Department by Philco Corporation. These reports and all matters in connection therewith were handled in a confidential manner."

The defense of Philco is that its report to the United States is protected by an absolute privilege two-fold grounded. First, it was a communication required of and made by Philco as an agency of the United States government; and secondly, it was the initial step in a quasi-judicial proceeding, i.e. the administrative inquiry

provided by the Defense Department as a remedy for an unjust implication. Since we hold the communication absolutely privileged on the first ground, we neither explore the mechanics of the administrative inquiry nor resolve the contention of the plaintiffs that it is not in any sense a judicial proceeding.

To start with, the agreement's pertinent provisions are these:

> "SECTION I—SECURITY CONTROLS
> "(A) The Contractor agrees to provide and maintain a system of security controls within its or his own organization in accordance with the requirements of the Department of Defense Industrial Security Manual for Safeguarding Classified Information attached hereto and made a part of this agreement. . . ."

In relevant part the Manual directs:

> "Paragraph 6. REPORTS—The contractor shall submit immediately to the cognizant security officer—
>
> * * *
>
> "(b) A report, classified if appropriate, of any loss, compromise, or *suspected* compromise of classified information.
>
> * * *
>
> "Paragraph 14.1. LOSS, COMPROMISE OR SUSPECTED COMPROMISE OF CLASSIFIED INFORMATION
> "a. The contractor shall establish procedures to insure that each loss, compromise or *suspected* compromise of classified information is immediately reported to the appropriate official of the contractor having responsibility for security within the facility. Classified information which cannot be located shall be presumed to be lost until an investigation by the cognizant military department determines otherwise.
>
> "b. Immediately upon receipt of such a report, the contractor shall initiate an inquiry to ascertain all of the circumstances of the loss or compromise. In the event of loss, a thorough search shall be conducted for the Classified information.

> "c. The contractor shall make an immediate report of the incident to the cognizant security officer in accordance with paragraph 6.b" [supra]. (Accent added.)

The requisite system for receiving charges, investigating them and transmitting reports thereof to the Defense Department was installed by Philco. Even if the libelous report was not systematically made first to the "cognizant security officer" of the Defense Department, but conveyed earlier orally to another Department official with the written report sent to the Director of the Security Program Division, Office of the Secretary of Defense, all as the plaintiffs contend, it is inconsequential. The content of the report, and not the means of its transmittal, is the gravamen of the complaints here.

To succeed in its motion, the company did not need to prove that the contents of the alleged compromising data were State or classified secrets. To expose the documents could have been a breach of the agreement and of national security. The prospect could force the defendant into the unfair dilemma of either a possible abrogation of its pledge of secrecy to the Government or abandonment of its principal defense to the libel action. Thus, too, if compellable, disclosure would enable an individual employee to destroy the vital protections written into the contract.

While these possibilities argue against the production, the overtopping reason for not requiring proof that the documents were State secrets is that it is irrelevant. These actions obviously are not premised on the character of the documents; they are based on the report of Philco to the United States. The defense at this juncture is not that the papers were classified. Judgment went for Philco not because the information comprised State secrets but because the publication of the report was clothed with immunity by law.

Nor were the plaintiffs injured by the absence of the report from the case. It was not in evidence, but the quotations from it and the denunciations of them in the plaintiffs' complaints, required the District Court to assume that the report was untrue. This hypothesis also included the plaintiffs' contention that the reported documents were of no value. It also accepted the plaintiffs' denigration of the report as an "edited", "excerpted" and "truncated" version of the intracompany memorandum which in its original form acquitted the plaintiffs of unfaithfulness to their trust.

To be predominantly emphasized here is that the contract embraces reports by Philco to the Government not only of actual but of each suspected compromise of classified information. Equally important, the company has no discretion and is mandatorily ordered to report the suspicion immediately. There is no question but that the system of reporting was valid. The obligation could scarcely be couched in more imperious or exacting language. It embraces both true and false accusations, both substantial and insubstantial suggestions, perhaps encompassing even rumors. It demands investigation of them by the company and a report of it to the Defense Department. That is precisely what Philco did. Faithful to the contract, it could have done no less. The issue, then, is whether in these circumstances Philco may be held answerable for falsity and defamation in the report.

For its absolute privilege Philco analogizes its position with that of an executive agency of the Government. The immunity conferred on a Federal officer or agency, high or low in the echelon of the executive department of the United States, and the reasons therefor, have heretofore been declared generally, surely too well for us to venture a dissertation of our own. *Barr v. Matteo*, 360 U.S. 564 (1959); *Howard v. Lyons*, 360 U.S. 593 (1959). *Matteo*, puts it pithily:

"It has been thought important that officials of government should be free to exercise their duties unembarrassed by the fear of damage suits in respect of acts done in the course of those duties —suits which would consume time and energies which would otherwise be devoted to governmental service and the threat of which might appreciably inhibit the fearless, vigorous, and effective administration of policies of government. . . ."

* * *

"The privilege is not a badge or emolument of exalted office, but an expression of a policy designed to aid in the effective functioning of government. The complexities and magnitude of governmental activity have become so great that there must of necessity be a delegation and redelegation of authority as to many functions, and we cannot say that these functions become less important simply because they are exercised by officers of lower rank in the executive hierarchy." [1]

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[1] "360 U.S. at 571-73 (Harlan, J., joined by 3 justices). Justice Black's concurrence, necessary to the Court's judgment, stressed the public interest, which he found satisfied by the unhindered public comment of responsible government officials, a consideration not in the case at hand."

The logic of this thesis, we think, endues Philco with the attributes of a Federal agency in the problem of this controversy. Indisputably, the Government by the contract bared and confided State secrets to Philco. The company was imparted, and it worked in, knowledge exclusively the sovereign's. It was a sharing of confidence quite aside from a subcontract for the production of defense supplies. So it was that the company and such of its employees as were confidants were answerable for keeping the nation's secrets, as fully as if they were governed by the oath of a Federal official. Closely performing his duties and charged with equal responsibility and loyalty, we think the company and its trusted personnel were imbued with the official's character, and partake of his immunity to liability, whenever and wherever he would enjoy the absolute privilege.

The further question is whether a Federal agency or employee would in the position of Philco and its trusted employees be accorded the unqualified privilege. In this determination we do not encounter the difficult resolutions—particularly the scope of the libeler's duty, and the medium used, to issue the sullying statements—which confronted the Court in Barr v. Matteo, supra, 360 U.S. 564 and Howard v. Lyons, supra, 360 U.S. 593. These are absent here for, as we have seen, no doubt existed of the right of Philco to make the communication. It was mandatory, and immediately within the province of Philco's functions. Again, here no open publication of the alleged libel was made, but only a confidential transmittal within the internal operations of the Government. These considerations would excuse a Federal agency or employee.

In *Matteo*, supra, 360 U.S. at 575, the judgment recognized the exemption of one who acts under an obligation to the Government, saying:

> "That petitioner was not *required* by law or by direction of his superiors to speak out cannot be controlling in the case of an official of policy-making rank, for the same considerations which underlie the recognition of the privilege as to acts done in connection *with a mandatory duty* apply with equal force to discretionary acts at those levels of government where the concept of duty encompasses the sound exercise of discretionary authority." (Accent added.)

That an utterance plainly commanded by the duties of the author to the Government has been repeatedly recognized as unconditionally privileged is demonstrated by Preble v. Johnson, 275 F.2d 275 (10 Cir. 1960) and Standard Nut Margarine Co. v. Mellon, 72 F.2d 557 (D.C. Cir. 1934).

Although dissenting from the complete exoneration of libel granted in *Matteo*, the Chief Justice, joined by Mr. Justice Douglas, conceded that:

> "It may be assumed, *arguendo*, that a government employee should have absolute immunity when according to his duty he makes internal reports to his superior or to another upon his supeior's order. Cf. Taylor v. Glotfelty, 201 F.2d 51; Farr v. Valentine, 38 App. D.C. 413; DeArnaud v. Ainsworth, 24 App. D.C. 167. This might be a practical necessity of government that would find its justification in the need for a free flow of information within every executive department. It may not be unreasonable to assume that if a maliciously false libel is uttered in an internal report, it will be recognized as such and discredited without further dissemination." (p. 582.)

He further commented:

> "Releases to the public from the executive branch of government imply far greater dangers to the individual claiming to have been defamed than do internal libels. First, of course, a public statement—especially one arguably libelous—is normally intended for and reaches a larger audience than an internally communicated report. Even if the release can later be shown libelous, it is most unusual for a libeled person to obtain the same hearing that was available for the original press release. Second, a release is communicated to a public in no position to evaluate its accuracy; where the report is made internally, the superior is usually in a position to do so. If the report is false, the superior can undo much of the harm of the report by countermanding it or halting its spread." (p. 583)

The distinction between a public and an intramural issuance of the slander was stressed in Poss v. Lieberman, 299 F.2d 358, 360 (2 Cir. 1962):

> "There has been some uncertainty among scholars as to the reach of absolute privilege to the lower echelons of administrative employees. Cf. Prosser on Torts, 2d ed. (1955), Sec. 95, p. 612. While the language of the recent cases indicates an unlimited reach to the privilege, it may be possible that a case involving such an administrative employee at a minor grade might lead to a reexamination of the language. Plainly, though, there

> is better reason to hold the privilege absolute *when applied to reports required or permitted to be made within an agency in the normal functioning of the agency's business,* when these reports are required to be confidential as here and their disclosure would be a misdemeanor...." (Accent added.)

Finally, it may not be amiss to note that we do not decide that the plaintiffs were rightly suspended, or cannot be restored to their classified positions, or cannot recapture their lost wages. Our decision only determines that an action for libel will not lie in the circumstances against a private party fulfilling its governmentally imposed duty to inform. Presumably to correct injustice incident to the exaction of this duty, the administrative proceedings heretofore noted were provided. Whether they give adequate redress or whether other remedies are available are questions not intended to be answered here. Certainly we do not deny the existence of any such other remedies.

The judgment of the District Court will not be overturned.

Affirmed.

APPENDIX B

THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

Order Granting Summary Judgment

LEO GEORGE BECKER,
Plaintiff

v.

PHILCO CORPORATION,
Defendant

Civil Action No. 3081

ORDER

For the reasons set forth in the Memorandum Opinion of the Court dated September 4, 1964, the defendant's motion for summary judgment be, and it hereby is, granted, and it is ORDERED that this action be, and it hereby is, dismissed.

September 21, 1964 /s/ OREN R. LEWIS
United States District Judge

Seen:
Steptoe & Johnson
Shoreham Building
Washington, D. C.

Boothe, Dudley, Koontz
& Blankingship
711 Princess Street
Alexandria, Virginia
By _____
W. W. Koontz
Counsel for Defendant

Seen as to form:

_____
Frank B. Tavenner
458 Leesburg Pike
Falls Church, Virginia

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THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Order Granting Summary Judgment

JAMES J. TAGLIA,
Plaintiff

v.

PHILCO CORPORATION,
Defendant

Civil Action No. 3082

ORDER

For the reasons set forth in the Memorandum Opinion of the Court dated September 4, 1964, the defendant's motion for summary judgment be, and it hereby is, granted, and it is ORDERED that this action be, and it hereby is, dismissed.

September 21, 1964 /s/ OREN R. LEWIS
United States District Judge

Seen:
Steptoe & Johnson
Shoreham Building
Washington, D. C.

Boothe, Dudly, Koontz
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THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

LEO GEORGE BECKER,
Plaintiff
v.
PHILCO CORPORATION,
Defendant
Civil Action No. 3081

JAMES J. TAGLIA,
Plaintiff
v.
PHILCO CORPORATION,
Defendant
Civil Action No. 3082

MEMORANDUM OPINION

These are suits for libel. The Defendant pleads absolute privilege and moved to dismiss on that ground. Affidavits and exhibits were introduced in support of the motion, converting it to a motion for summary judgment. (Rule 12(b), Federal Rules of Civil Procedure.)

The gravamen of both complaints is that a former employee of Philco Corporation, one Patricia Poole, under date of July 17, 1963, wrote the security officer of the defendant corporation charging the plaintiffs with violating the Industrial Security Regulations of the United States while they were employees of the Philco Corporation; whereupon Philco made an investigation of the charges, prepared a report and submitted the same to the Department of Defense, resulting in the suspension of the Plaintiffs' security clearance by the Department of Defense. Lacking security clearance, plaintiffs lost their employment with the Philco Corporation.

Plaintiffs allege the statements made in the report by the Philco Corporation to the Defense Department are

completely erroneous, malicious, slanderous and libelous.

The defendant corporation admits that in June of 1962 Patricia Poole, in her capacity as a deputy security officer at Philco's Washington offices, made a telephone report to Joseph M. Transue, Security Director of the Philco Corporation, concerning suspected compromise of classified information involving Leo George Becker and James J. Taglia. The deputy security officer was directed to reduce the report to writing, and upon receipt thereof the security officer conducted an investigation of the circumstances reported. The results of this inquiry were then turned over to Robert M. Jones, Vice President of Philco Corporation in charge of industrial relations, for action in accordance with the requirements of the Department of Defense Industrial Security Manual for safeguarding classified information and the Security Agreement with the Defense Department. Mr. Jones participated in further inquiry of the subject matter which included informing both Mr. Becker and Mr. Taglia of the nature of the report and affording them a full opportunity to be heard, and permitting them to make statements concerning the matter under investigation. A report of the matter was then made to the Defense Department by Philco Corporation. These reports and all matters in connection therewith were handled in a confidential manner.

Philco Corporation is a defense contractor of the United States and as a prerequisite to performing work for the Department of Defense has executed a Department of Defense Security Agreement which provides, inter alia:

> "Paragraph 1(A) DD Form 441 SECURITY CONTROLS.
>
> "A. The contractor agrees to provide and maintain a system of security controls within its or his own organization in accordance with the requirements

of the Department of Defense Industrial Security Manual for Safeguarding Classified Information attached hereto and made a part of this agreement . . . . In order to place in effect such security controls, the contractor further agrees to prepare standard practice procedures for its or his own use, such procedures to be consistent with the Department of Defense Industrial Security Manual for Safeguarding Classified Information."

The Industrial Security Manual above referred to required, among other things:

"Paragraph 5. GENERAL REQUIREMENTS - The contractor shall be responsible for safeguarding all classified information under his control. In the furtherance of this requirement, the contractor:

"a. Shall assure that classified information is furnished or disclosed only to authorized persons. . . .

"b. Shall provide suitable protective measures within his facility for the safeguarding of classified information. . . .

"Paragraph 6. REPORTS - The contractor shall submit immediately to the cognizant security officer - . . . .

"b. A report, classified if appropriate, of any loss, compromise, or suspected compromise of classified information. . . .

"Paragraph 14.1. LOSS, COMPROMISE OR SUSPECTED COMPROMISE OF CLASSIFIED INFORMATION.

"a. The contractor shall establish procedures to insure that each loss, compromise or suspected compromise of classified information is immediately reported to the appropriate official of the contractor having responsibility for security within the facility. Classified information which cannot be located shall be presumed to be lost until an investigation by the cognizant military department determines otherwise.

"b. Immediately upon receipt of such a report, the contractor shall initiate an inquiry to ascertain all of the circumstances of the loss or compromise. In the event of loss, a thorough search

shall be conducted for the classified information.

"c. The contractor shall make an immediate report of the incident to the cognizant security office in accordance with paragraph 6.b."

The Philco Corporation Security Digest, which implements the Industrial Security Manual for safeguarding classified information, provides, inter alia, that all cleared personnel are responsible for:

"(b) Reporting all violators and violations of Security Regulations, to the Security Officer assigned at a facility, and/or to the Corporate Security Director.

"(c) Reporting the suspicious conduct or unusual interest in classified information, of any person, beyond normal requirements on a NEED TO KNOW basis."

The plaintiffs concede that Philco Officers and employees are required to conform to the foregoing provisions in re the reporting of actual or suspected security violations to the Department of Defense, but say such is not material to the determination of the motion here under consideration.

The facts first to be determined in these cases, say the plaintiffs, are:

(1) Were the documents obtained by James J. Taglia and Leo G. Becker outside the normal course of their employment by the Philco Corporation;

(2) were the documents, in fact, classified information;

(3) was the defendant required under the terms of its contract to report the activities of the plaintiffs with reference to the two documents in question; and

(4) did the defendant, in making a libelous report, comply with the provisions of its contract with the United States or was it acting as a volunteer.

Only then can the Court reach the question of whether or not the defendant corporation is entitled to absolute priv-

ilege in reporting the incidents to the Defense Department. We disagree.

Clearly persons performing governmental functions are shielded against the hazards of damage suits resulting from the performance of governmental functions. *Barr v. Matteo*, 360 U.S. 564 (1959); *Poss v. Lieberman*, 299 F.2d 358 (2d Cir. 1962).

The classified information here involved were state secrets.

The conduct of the business of the Defense Department requires that it release classified information to its private defense contractors and in so doing it is mandatory that the United States protect itself against hostile or destructive activities by preventing unauthorized disclosure of classified information relating to the national defense.

The Philco Corporation was such a defense contractor and as such was required by law[1] to report to the Defense Department any compromise or suspected compromise of classified information. In so reporting Philco was a link in the Government's overall systems whereby classified information is protected. It was thus performing a governmental function.

It is the occasion of the publication rather than the publication itself which is determinative of whether or not it is entitled to absolute privilege. Here the occasion was compliance with government security regulations enacted for the protection of state secrets. *Barr v. Matteo, supra; Preble v. Johnson*, 275 F.2d 275 (10th Cir. 1960).

Further, the communication sued upon was circulated only in closely restricted channels. It was not available to anyone except upon a "need to know" basis and has not

[1] The Government's Security Regulations are authorized by Statute. See *Greene v. McElroy*, 360 U.S. 474.

been published or otherwise made available to the public.

To subject Philco, in performing its duty of reporting the compromise or suspected compromise of classified information to the Department of Defense, to "the burden of a trial and to the inevitable danger of its outcome would," in the language of Judge Learned Hand, "dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties." See *Gregoire v. Biddle*, 177 F.2d 579.

Summary judgment for the defendant will be granted.

Counsel for the defendant should prepare an appropriate order dismissing the suits, submit it to counsel for the plaintiffs for approval as to form, and it will be entered accordingly.

September 4th, 1964. /s/ OREN R. LEWIS
United States District Judge

Order Denying Motion for Reconsideration

ORDER

Upon examination and due consideration of the matter and things therein contained, the plaintiffs' motion for reconsideration, filed herein September 25, 1964, is denied.

October 1, 1964 /s/ OREN R. LEWIS
United States District Judge

APPENDIX C

DEPARTMENT OF DEFENSE SECURITY AGREEMENT

This Agreement, entered into this 11th day of December, 1961, by and between the United States of America through the Department of Navy, acting for the Department of Defense (hereinafter called the Government) and Philco Corporation a corporation organized and existing under the laws of the State of Delaware * * * with its principal office and place of business at Tioga and "C" Streets in the City of Philadelphia State of Pennsylvania (hereinafter called the Contractor).

WITNESSETH THAT:

WHEREAS, the Government, through the Department of the Army, the Department of the Navy and/or the Department of the Air Force, has in the past purchased or may in the future purchase from the contractor supplies or services which are required and necessary to the national defense of the United States; or may invite bids or request quotations on proposed contracts for the purchase of supplies or services which are required and necessary to the national defense of the United States, and

WHEREAS it is essential that certain security measures be taken by the Contractor prior to and after his being accorded access to classified information; and

WHEREAS the parties desire to define and set forth the precautions and specific safeguards to be taken by the Contractor and the Government in order to preserve and maintain the security of the United States through the prevention of improper disclosure of classified information derived from matters affecting the national defense; sabotage; or any other act detrimental to the security of the United States:

NOW, THEREFORE in consideration of the foregoing and of the mutual promises herein contained, the parties hereto agree as follows:

SECTION I – SECURITY CONTROLS

(A) The Contractor agrees to provide and maintain a system of security control, within its or his own organization in accordance with the requirements of the Department of Defense Industrial Security Manual for Safeguarding Classified Information attached hereto and made a part of this agreement, subject, however, (i) to any revisions of the Manual required by the demands of national security as determined by the Government, notice of which has been furnished to the Contractor, and (ii) to mutual agreements entered into by the parties in order to adapt the Manual to the Contractor's business and necessary procedures thereunder. In order to place in effect such security controls, the Contractor further agrees to prepare Standard Practice Procedures for its own use, such procedures to be consistent with the Department of Defense Industrial Security Manual for Safeguarding Classified Information. In the event of any inconsistency between the Contractor's Standard Practice Procedures and the Department of Defense Industrial Security Manual for Safeguarding Classified Information as the same may be revised, the Manual shall control:

(B) The Government agrees that it shall indicate when necessary by security classification (Top Secret, Secret, or Confidential) the degree of importance to the national defense of information pertaining to supplies, services, and other matters to be furnished by the Contractor to the Government or the Government to the Contractor, and the Government shall give written notice of such security classification to the Contractor and of any subsequent changes thereof; provided, however, that matters requiring security classification will be assigned the least restrictive security classification consistent with proper safeguarding of the matter concerned since

overclassification causes unnecessary operational delays and depreciates the importance of correctly classified matter. Further, the Government agrees that when Atomic Energy information is involved it will when necessary indicate by a marking additional to the classification marking that the information is "Restricted Data — Atomic Energy Act, 1946." The Contractor is authorized to rely on any letter or other written instrument signed by the contracting officer changing the classification of matter. The Government also agrees upon written application of the Contractor to designate employees of the Contractor who may have access to information classified Top Secret or Secret or to information classified Confidential when "Restricted Data" is involved, or to matter involving research, development, or production, of cryptographic equipment, regardless of its military classification; and alien employees to have access to any classified matter, or in the case of contracts for furnishing or constructing aircraft, aircraft parts, or aeronautical accessories, to have access to the plans or specifications, or to the work under construction, or to participate in the contract trials, whether such aeronautical contracts are classified or not.

(C) The Contractor agrees that it or he shall determine that any subcontractor, subbidder, individual, or organization proposed by it or him for the furnishing of supplies or services which will involve access to classified information in its or his custody has executed a Department of Defense Security Agreement which is still in effect, with any Military Department, prior to being accorded access to such classified information.

SECTION II -- INSPECTION

Designated representatives of the Government responsible for inspection pertaining to industrial plant security shall have the right to inspect at reasonable intervals the procedures, methods, and facilities utilized by the Contractor in complying with the requirements of the terms and conditions of the Department of Defense In-

dustrial Security Manual for Safeguarding Classified Information. Should the Government, through its authorized representative, determine that the Contractor's security methods, procedures, or facilities do not comply with such requirements, it shall submit a written report to the Contractor advising him of the deficiencies.

SECTION III – MODIFICATION

Modification of this security agreement (as distinguished from the Industrial Security Manual for Safeguarding Classified Information, which may be modified in accordance with Section I of this Agreement) may be made only by written agreement of the parties hereto.

SECTION IV – TERMINATION

This agreement shall remain in effect until terminated through the giving of 30 days written notice to the other party of intention to terminate; provided, however, notwithstanding any such termination, the terms and conditions of this agreement shall continue in effect so long as the Contractor has classified information in his possession or under his control.

SECTION V – PRIOR SECURITY AGREEMENTS

As of the date hereof, this security agreement replaces and succeeds any and all prior security or secrecy agreements, understandings, and representations with respect to the subject matter included herein, entered into between the Contractor and the Department of the Army, the Department of the Navy, and/or the Department of the Air Force: Provided, That the term "security or secrecy agreements, understandings, and representations" shall not include agreements, understandings, and representations contained in contracts for the furnishing of supplies or services to the Government heretofore entered into between the Contractor and the Department of the Army, the Department of the Navy, and/or the Department of the Air Force.

SECTION VI -- SECURITY COSTS

This agreement does not obligate Government funds, and the Government shall not be liable for any costs or claims of the Contractor arising out of this agreement or instructions issued hereunder. It is recognized, however, that the parties may provide in other written contracts for security costs which may be properly chargeable thereto.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written:

THE UNITED STATES OF AMERICA

By: W. W. Pankoe
Industrial Security Director
Inspector of Naval Material,
Philadelphia

THE PHILCO CORPORATION

By: Robert M. Jones
Vice President-Industrial
Relations

[Certificate]

I, H. R. Nolte, Jr, certify that I am the Secretary of the corporation named as Contractor herein; that Robert M. Jones who signed this agreement on behalf of the Contractor, was then a Vice President of said corporation, that said agreement was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

/s/ H. R. Nolte, Jr.